

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JERRY LEE BRIMS, JR.
Petitioner,

v.

ROBERT CUNNINGHAM,
Respondent.
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DATE FILED: 11/15/16

**MEMORANDUM OPINION
AND ORDER**

12 CV 7029 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Lisa Margaret Smith's Report and Recommendation ("R&R") on petitioner Jerry Lee Brims's petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his February 16, 2011, resentencing proceeding in Rockland County Court in which the court imposed terms of post-release supervision. (Doc. #21). Judge Smith recommended that the Court dismiss the petition because petitioner's claims were either not cognizable on habeas review or procedurally defaulted. Familiarity with the factual and procedural background of this case is presumed.

For the following reasons, the Court adopts the R&R as the opinion of the Court and dismisses the petition.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the report and recommendation, but the objections must be "specific[,] written," and submitted within 14 days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district

court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Petitioner did not object to Judge Smith's R&R.

The Court has reviewed Judge Smith's thorough and well-reasoned R&R and finds no error, clear or otherwise.

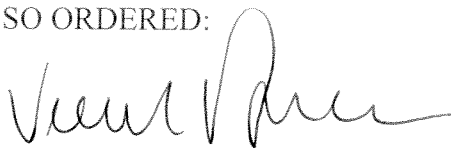
CONCLUSION

Accordingly, the Court adopts the R&R in its entirety as the opinion of the Court. The petition for a writ of habeas corpus is DISMISSED. The Clerk is instructed to enter judgment accordingly and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v United States, 369 U.S. 438, 444-45 (1962).

Dated: November 15, 2016
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge